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PACIFIC INFORMATION RESOURCES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PACIFIC INFORMATION
RESOURCES, INC.

Plaintiff,

v.

SIMPLE COMMUNICATIONS, et al.,

Defendants

CASE NO. C07-4131 MMC

~~[PROPOSED]~~ ORDER

GRANTING IN PART AND DEFERRING
RULING IN PART ON PLAINTIFF'S
APPLICATION FOR DEFAULT
JUDGMENT; VACATING HEARING

~~Hearing Date: December 5, 2008~~

~~Time: 9:00 am~~

~~Crtn: 7~~

1 Upon consideration of Plaintiff Pacific's Information Resources, Inc.'s
 2 ("Pacific") Application for Default Judgement against Simple Communications and
 3 William Travis Sullivan, and the Memorandum of Law and Declarations in support
 4 thereof, it is ORDERED that Pacific's Application is GRANTED ~~with the Court~~
 5 ~~finding as follows:~~ IN PART. Specifically, plaintiff's request for a permanent injunction is
 6 granted, with the Court finding as follows:

- 7 (1) Pacific owns and operates the website located at www.searchsystems.net
 8 (the "**WEBSITE**").
- 9 (2) Pacific has registered two valid copyrights concerning the **WEBSITE**.
 10 One registration, bearing Registration N. TX 6-275-368 protects the text of
 11 the **WEBSITE**, bearing the URL www.searchsystems.net. Plaintiff's other
 12 valid copyright registration at issue, bears Registration No. TX 6-275-367
 13 which protects PHP Hyper Text Processor source code of the **WEBSITE**.
- 14 (3) Pacific also has a valid registration from the United States Patent and
 15 Trademark Office for its service mark consisting of the work mark "search
 16 systems" within a design or drawing bearing USPTO Trademark
 17 Registration No. 2109094 (the "**SERVICE MARK**").
- 18 (4) Pacific has continuously, for the preceding five years, at the very least,
 19 continuously and openly used variations of its registered **SERVICE**
 20 **MARK**, but such variations, while not registered, acquired secondary
 21 meaning and thus are fully protected under applicable federal and state law
 22 as described in Pacific's Complaint on file with the court; that Pacific's
 23 registered **SERVICE MARK** and unregistered service marks are
 24 collectively herein after referred to as the "**SERVICE MARKS**" and that
 25 the unregistered but legally valid and protected **SERVICE MARKS** of
 26 Pacific include, but are not limited to, the terms: "searchsytems,"
 27 "searchsytems.net."

28 Consequently, the Court orders that Defendant Simple Communications, its
 agents, servants, employees, attorneys, successors, licensees, partners and all persons

1 acting in concert with each or any of them and Defendant William Tavis Sullivan,
2 his agents, servants, employees, officers, attorneys, successors, licensees, partners
3 and assigns, and all persons acting in concert with each or any of them, are
4 permanently enjoined from inducing, aiding, assisting, encouraging, enabling,
5 engaging in, causing, materially contributing to or otherwise facilitating through any
6 means, whether in existence or later created, the unauthorized and/or unlicensed user
7 reproduction, downloading, uploading, distribution of copies of Pacific's
8 copyrighted works, including but not limited to any and all content, material and
9 information contracted in, derived from or otherwise, whether now in existence or
10 later created. The conduct hereby enjoined includes, but is not limited to:

11 a. directly, indirectly, vicariously or contributorily infringing Pacific's
12 registered SERVICE MARKS;

13 b. directly, indirectly, vicariously or contributorily infringing Pacific's
14 unregistered SERVICE MARK which have become distinctive in the public's mind
15 and caused the public to associate Pacific's services and Website with the SERVICE
16 MARKS;

17 c. directly, indirectly, vicariously or contributorily infringing Pacific's
18 unregistered TRADE NAMES which have become distinctive in the public's mind
19 and cause the public to associate Pacific's services and Website with the TRADE
20 NAMES;

21 d. directly, indirectly, vicariously or contributorily selling or marketing
22 services in any way that tends to deceive, mislead, or confuse the public into
23 believing that the Defendants' service is in any way sanctioned by or affiliated with
24 Pacific's Website;

25 e. directly, indirectly, vicariously or contributorily diluting the distinctive
26 quality of Pacific's SERVICE MARKS, TRADE NAMES, TRADE DRESS and
27 Website;
28

1 f. directly, indirectly, vicariously or contributorily otherwise competing
2 unfairly with Pacific; and

3 g. directly, indirectly, vicariously, or contributorily infringing Pacific's
4 copyrights relating to or concerning its Website and Source Code.

5 The Court further orders that Defendant Simple Communications, its agents,
6 servants, employees, officers, attorneys, successors, licensees, partners and all
7 persons acting in concert with each or any of them and Defendant William Travis
8 Sullivan, his agents, servants, employees, officers, attorneys, successors, licensees,
9 partners and assigns, and all persons acting in concert with each or any of them, are
10 permanently enjoined from directly, indirectly, vicariously, or contributorily
11 reproducing, copying, manufacturing, importing, using, promoting, selling, renting,
12 leasing, distributing, or displaying:

- 13 (1) any part of the **WEBSITE** or any website substantially similar to the
14 copyright protected **WEBSITE**;
- 15 (2) any part of the **SERVICE MARKS**; or
- 16 (3) from authorizing anyone to do the same, or from exercising any other of
17 the exclusive rights of a copyright owner and service mark owner under the
18 various federal and state statutes listed in Pacific's Complaint.
- 19 (4) selling or marketing services in any way that tend to deceive, mislead, or
20 confuse the public into believing that any of the websites or other activities
21 were or are in any way sanctioned by or affiliated with Pacific's
22 **WEBSITE**;
- 23 (5) diluting the distinctive quality of Pacific's **SERVICE MARKS**; or
- 24 (6) otherwise competing unfairly with Pacific or its **WEBSITE**; or
- 25 (7) from authorizing anyone to do the same, or from exercising any other of
26 the exclusive rights of a copyright owner and a service mark owner under
27 the various federal and state statutes listed in Pacific's Complaint.

28 ///

1 ~~It is further ORDERED that JUDGEMENT in the amount of \$ _____ is~~
2 ~~ENTERED against Defendants Simple Communications, and Alabama corporation~~
3 ~~and William Travis Sullivan.~~

4 To the extent plaintiff requests an award of damages, the Court, for the reasons stated in the
5 order filed concurrently herewith, defers ruling thereon until plaintiff has had an opportunity to
6 supplement its application.

7 The December 5, 2008 hearing is VACATED.

8 **SO ORDERED**

9 Dated: November 26 _____, 2008

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11 Honorable MAXINE M. CHESNEY
12 United States District Judge
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